



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

L. Preston Bryant, Jr.
Secretary of Natural Resources

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

INDEPENDENCE LUMBER INCORPORATED Registration No. 11484

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1309, - 1316, between the State Air Pollution Control Board and Independence Lumber, Inc. regarding Independence Lumber for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the Regulations for the Control and Abatement of Air Pollution.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Board” means the State Air Pollution Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and - 1301.
2. “CFR” means the Code of Federal Regulations, as incorporated into the Regulations
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1 – 1185.

5. "Facility " means Independence Lumber, Inc., located at 407 Lumber Lane in Grayson County, Virginia, which is permitted to operate a lumber manufacturing facility.
6. "Independence Lumber" means Independence Lumber Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Independence Lumber is a 'person' within the meaning of Va. Code § 10.1 – 1300.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1 – 1309.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
9. "Permit" means Permit a NSR permit to modify and operate a lumber manufacturing facility which was issued under the Virginia Air Pollution Control Law and the Regulations to Independence Lumber on May 20, 2008.
10. "Regulations" mean the Regulations for the Control and Abatement of Air Pollution, means 9 VAC 5 chapters 10 through 80.
11. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Facts and Conclusions of Law

1. Independence Lumber owns and operates the Facility in Grayson County, Virginia. The Facility is a lumber manufacturing facility.
2. On Thursday, February 19, 2009, a DEQ Air Inspector conducted an air compliance inspection of the facility as a result of information received from Independence Lumber's consultant/contractor. The inspection noted the installation and operation of a wood dust drying system. The system consisted of the following components: wood fuel feed bin, wood-fired wood dust dryer unit with a Webb burner, wood dust feed screen with two conveyors to feed the rotary dryer, rotary dryer, cyclone with top flue gas exhaust and bottom product discharge "no rotary air lock", and a No. 2 wood product sizing screen.

3. 9 VAC 5-80-1120 (A). requires that, "No owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source."
4. 9 VAC 5-80-1210 (D): requires that, "Any owner who constructs or operates a new or modified source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section."
5. 9 VAC 5-50-50 (A). requires that, "Any owner of a new or modified source subject to the provisions of this chapter shall provide written notification to the board of the following: (1). The date of commencement of construction, reconstruction or modification of a new or modified source postmarked no later than 30 days after such date. (2). The anticipated date of initial startup of a new or modified source postmarked not more than 60 days nor less than 30 days prior to such date. (3). The actual date of initial startup of a new or modified source postmarked within 15 days after such date..."
6. On February 26, 2009, Department staff met with representatives of Independence Lumber to discuss the alleged violations.
7. On March 10, 2009, based on the inspection and follow-up information, the Department issued Notice of Violation No. 3-2-SWRO-2009 to Independence Lumber for the alleged violations described in paragraphs 1. through 5. above.
8. On March 13, 2009 Independence Lumber contacted DEQ by telephone response regarding the NOV.
9. On April 14, 2009, Independence Lumber, Inc. was issued a permit to modify and operate, therefore returning the Facility to compliance.
10. Based on the results of the February 19, 2009 inspection and the February 26, 2009 meeting, the Board concludes that Independence Lumber has violated 9 VAC 5-80-1120 (A), 9 VAC 5-80-1210 (D) and 9 VAC 5-50-50 (A) as described on paragraphs 1 through 5 above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and – 1316, the Board orders Independence Lumber and Independence Lumber agrees to pay a civil charge of \$18,743 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Independence Lumber shall include its Federal Identification Number with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

The \$18,743 Civil Charge shall be paid on the following schedule:

<u>DATE DUE</u>	<u>MINIMUM PAYMENT</u>
11/01/09	\$3,124 or balance due
02/01/10	\$3,124 or balance due
05/01/10	\$3,124 or balance due
08/01/10	\$3,124 or balance due
11/01/10	\$3,124 or balance due
02/01/11	\$3,123.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Independence Lumber for good cause shown by Independence Lumber, or on its own motion pursuant to the Administrative Process Act Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order
3. For purposes of this Order and subsequent actions with respect to this Order only,

Independence Lumber admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Independence Lumber consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Independence Lumber declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to modify, rewrite, amend, or enforce this Order.
6. Failure by Independence Lumber to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Independence Lumber shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Independence Lumber shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Independence Lumber shall notify DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition listed above, which

Independence Lumber intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Independence Lumber. Nevertheless, Independence Lumber agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:

(a) Independence Lumber petitions the Director or his designee to terminate the order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order, or

(b) the Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to Independence Lumber.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Independence Lumber from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Independence Lumber and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Independence Lumber certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Independence Lumber to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Independence Lumber.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Independence Lumber voluntarily agrees to the issuance of this Order.

And it is ORDERED this 17th day of August, 2009

Dallas R. Sizemore
Dallas Sizemore, Regional Director
Department of Environmental Quality

Independence Lumber, Inc. voluntarily agrees to the issuance of this Order.

Date: August 11, 2009 By: Randall Eller President
Randall Eller (Title)
Independence Lumber, Inc.

Commonwealth of Virginia

City/County of Grayson

The foregoing document was signed and acknowledged before me this 11th day of August, 2009 by Randall Eller who is President of Independence Lumber, Inc., on behalf of the corporation.

Rebecca M. Williams
Notary Public

326974
Registration No.

My commission expires: 11/30/2011

Notary Seal:

